

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2006 JUN 13 P 4:07

RONALD D. GONZALEZ,

Plaintiff

VS.

OSLIN NATION COMPANY
a/k/a BABTEX, INC.,

Defendant

SA06CA0512

CIVIL ACTION NO. _____
JURY TRIAL REQUESTED

FB

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Plaintiff, RONALD D. GONZALEZ, and files this his Original Complaint against Defendant, OSLIN NATION COMPANY a/k/a BABTEX, INC., and in support thereof would respectfully show unto the Court as follows:

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 USC §2000e. Plaintiff is a qualified individual to bring suit pursuant to Title VII of the Civil Rights Act of 1964, and amendments thereto. Plaintiff is of Hispanic national origin.
2. Plaintiff, RONALD D. GONZALEZ, is a natural citizen of the United States and resides at 9903 Carolwood Drive in San Antonio, Bexar County, Texas.
3. Defendant, OSLIN NATION COMPANY a/k/a BABTEX, INC., is a foreign corporation doing business in San Antonio, Bexar County, Texas. Defendant has between 15 and 100 employees. Defendant may be served with this Original Complaint by serving its Registered Agent, Mr. Andrew E. Boone, at 5510 South Westmoreland Road, Suite 300, Dallas, Texas 75237.
4. This Court has jurisdiction over this action pursuant to 28 USC §1331 (federal question). Venue is proper in the United States District Court for the Western District of Texas,

San Antonio Division, pursuant to 28 USC §1391(b), (c). Plaintiff's claims arose in whole or in part in the Western District of Texas, San Antonio Division, which is the District in which a substantial part of the events giving rise to the claim occurred. Furthermore, Defendant maintains an office at 11902 Warfield, San Antonio, Bexar County, Texas 78216 and is subject to personal jurisdiction in the San Antonio Division of the Western District of Texas.

5. Whenever in this Complaint it is alleged that Defendant did any act or thing, it is meant that Defendant, through its officers, agents, servants, employees or representatives, did such act and that it was done with full authorization and ratification of Defendant.

6. Plaintiff RONALD D. GONZALEZ was employed by OSLIN NATION COMPANY a/k/a BABTEX, INC. from April 1995 until he was terminated on September 27, 2004. Prior to the discrimination and termination by Defendant, Plaintiff's most recent position was that of Sales Representative. During his employment with Defendant, Plaintiff competently performed the essential functions of his job and faithfully discharged the duties of his job.

7. On or about September 27, 2004, Plaintiff was wrongfully terminated by the Defendant. Defendant misrepresented that Plaintiff was terminated for allegedly failing to meet sales goals for the past eight (8) years. Other non-Hispanic sales representatives who have not met their sales goals were not discharged. Additionally, during Plaintiff's employment by Defendant, his terms and conditions of employment were different from those of non-Hispanic Sales Representatives.

8. Prior to Plaintiff's termination, Plaintiff received annual performance bonuses in addition to his salary.

9. Plaintiff was qualified by his experience and training to continue in his job as Sales Representative. Nevertheless, on September 27, 2004, Plaintiff's employment was terminated.

10. At all times relevant, Defendant was engaged in an activity/industry affecting commerce which had between 15 and 100 employees for each working day in each of 20 or more calendar weeks in the current or preceding year.

11. Plaintiff has complied with all prerequisites for bringing an action under Title VII of the Civil Rights Act of 1964 and amendments thereto, 42 USC §2000e:

- a. On or about October 25, 2004, Plaintiff timely filed a written Charge and Complaint with the Equal Employment Opportunity Commission alleging discrimination on the basis of national origin (Exhibit "A").
- b. On or about March 17, 2006, the EEOC issued a Right to Sue Letter notifying Plaintiff that he had the right to sue within 90 days of the receipt of notification (Exhibit "B"). Plaintiff has filed this action within 90 days of the receipt of the Notice of Right to Sue.

12. Defendant has limited, segregated and classified Plaintiff on the basis of his national original, Hispanic. Defendant has excluded and denied benefits to Plaintiff, a qualified individual, on the basis of his national origin, Hispanic. Plaintiff was discriminated against, harassed and terminated by Defendant as a result of wrongful and illegal discrimination. The termination of Plaintiff's employment by the Defendant constitutes a willful, intentional and discriminatory discharge of Plaintiff's employment, violating Federal law pursuant to Title VII of the Civil Rights Act of 1964 and amendments thereto. 42 USC §2000e. Plaintiff alleges that Defendant violated Title VII of the Civil Rights Act of 1964, and amendments thereto.

13. Plaintiff alleges that Defendant acted with intent and malice. Plaintiff seeks exemplary damages as allowed by law.

14. Because of Defendant's acts, omissions and conduct in violation of Federal law, and its intentional and willful discrimination of Plaintiff, Plaintiff was forced to retain the Law Offices of Lang & Kustoff, LLP, 4103 Parkdale Street, San Antonio, Texas 78229 and the law firm of Davis, Cedillo & Mendoza, Inc., 755 East Mulberry, Suite 500, San Antonio, Texas

78212, to protect Plaintiff's rights. Plaintiff seeks reasonable and necessary attorneys' fees, expenses and Court costs.

15. Plaintiff seeks actual damages for his pecuniary and non-pecuniary losses, back pay, front pay, inconvenience, loss of enjoyment of life, lost benefits, attorneys' fees and expert fees within the jurisdictional limits of the Court.

16. **Jury Trial Requested.** Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant OSLIN NATION COMPANY a/k/a BABTEX, INC. be cited and commanded to appear and answer, and that upon trial of this cause, Plaintiff have relief as follows:

- a. The Court award Plaintiff compensatory damages, back pay, front pay, damages for inconvenience, loss of benefits, statutory damages and exemplary damages pursuant to Title VII of the Civil Rights Act of 1964;
- b. The Court award Plaintiff attorneys' fees, Court costs and reasonable expert fees; and
- c. The Court award Plaintiff pre-judgment and post-judgment interest as allowed by law.

Plaintiff prays for such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

LANG & KUSTOFF, LLP
4103 Parkdale Street
San Antonio, Texas 78229
Telephone: (210) 614-9444
Telecopier: (210) 614-9464

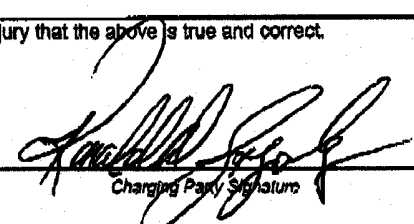
By: 

SYLVAN S. LANG, JR.
State Bar No. 11898700

RONALD E. MENDOZA
State Bar No. 13937700
DAVIS, CEDILLO & MENDOZA, INC.
755 East Mulberry, Suite 500
San Antonio, Texas 78212
Telephone: (210) 822-6666
Telecopier: (210) 822-1151

ATTORNEYS FOR PLAINTIFF,
RONALD D. GONZALEZ

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: Agency(ies) Charge No(s): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC </div> <div style="text-align: right;"> 360-2005-00385 </div> </div>	
and EEOC			
<small>State or local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) Mr. Ronald D. Gonzalez		Home Phone No. (Indel Area Code) (830) 608-0766	Date of Birth 01-30-1959
Street Address 3430 Foxbriar Lane		City, State and ZIP Code Cibolo, TX 78108	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name OSLIN NATION COMPANY		No. Employees, Members 15 - 100	Phone No. (Include Area Code) (512) 306-1672
Street Address 1301 Loop 360 South,		City, State and ZIP Code Austin, TX 78746	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap; padding: 5px;"> <div style="margin-right: 10px;"><input type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input type="checkbox"/> OTHER (Specify below.)</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE <div style="display: flex; justify-content: space-between;"> <div> Earliest 09-13-2004 </div> <div> Latest 09-27-2004 </div> </div> <div style="text-align: center; margin-top: 10px;"> <input type="checkbox"/> CONTINUING ACTION </div>	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
<p>I. On September 27, 2004, I was discharged from my job of Sales Representative. I had been employed with this company since on April 1995.</p> <p>During my employment my terms and conditions were different than other non Hispanic Sales Representatives. I was not allowed to attend a Boiler Seminar that was given on or around September 13, 2004. No reason was given to me for not allowing to attend this training.</p> <p>II. On September 27, 2004, I was informed by Steve Lipe, White, Branch Manager, that I was discharged for not meeting the sales goals for the past eight years.</p> <p>III. I believe that I have been discriminated against because of my National Origin, Hispanic, which is in violation of Title VII of the Civil Rights Act of 1964, as amended.</p> <p>IV. Other non-Hispanic Sales Representatives who have not met their sales goals and have not been discharged are: Kevin Phahning (Dallas office); Jim Kerr (Dallas Office); Larry Harms (Dallas Office) and Tommy Webb (San Antonio Office). I work in Austin, Texas and my sales are combined with the San Antonio, Texas office.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
<div style="display: flex; justify-content: space-between;"> <div> Oct 25, 2004 Date </div> <div>  Charging Party Signature </div> </div>		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

"A"

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Ronald D. Gonzalez**
9903 Carolwood Drive
San Antonio, TX 78213

From: **Dallas District Office - 450**
207 S. Houston St.
3rd Floor
Dallas, TX 75202



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

360-2005-00385

Michael C. Fetzer,
District Director

(214) 253-2850

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.



While reasonable efforts were made to locate you, we were not able to do so.



You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Michael C. Fetzer

Michael C. Fetzer,
Director

03/17/2006
 (Date Mailed)

Enclosures(s)

cc: **Andrew Boone**
Vice President
OSLIN NATION COMPANY
5510 S Westmoreland Rd, #300
Dallas, TX 75237

Sylvan S. Lang, Jr.
Lang & Kustoff, LLP
Attorneys at Law
4103 Parkdale Street
San Antonio, TX 78229

Oslin National Company
c/o Michael D. Strohhenn
Walters, Bender, Strohhenn & Vaughan P. C.
P. O. Box 26188
Kansas City, MO 64196

" B "